

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

COVENTRY HEALTH CARE OF
NEBRASKA, INC., a Nebraska Domestic
Corporation;

Plaintiff,

vs.

NEBRASKA DEPARTMENT OF
ADMINISTRATIVE SERVICES;
NEBRASKA DEPARTMENT OF
HEALTH & HUMAN SERVICES; DOUG
PETERSON, in his official capacity as
Attorney General of the State of Nebraska;
BYRON DIAMOND, in his official
capacity as Director, Nebraska Department
of Administrative Services; COURTNEY
PHILLIPS, CEO of the Nebraska
Department of Health and Human Services;
CALDER LYNCH, in his official capacity
as Director of the Nebraska Department of
Health and Human Services Division of
Medicaid and Long Term Care; and BO
BOTELHO, in his official capacity as
Acting Material Division Administrator;

Defendants,

and

NEBRASKA TOTAL CARE, INC.;
WELLCARE OF NEBRASKA, INC.; and
UNITEDHEALTHCARE OF THE
MIDLANDS, INC.;

Intervenors.

AMERIHEALTH NEBRASKA, INC., a
Nebraska Corporation;

Plaintiff,

vs.

NEBRASKA DEPARTMENT OF
ADMINISTRATIVE SERVICES, a
political subdivision of the State of
Nebraska; NEBRASKA DEPARTMENT

4:16CV03094

ORDER

4:16CV3100

OF HEALTH AND HUMAN SERVICES, a political subdivision of the State of Nebraska; BYRON L. DIAMOND, Director of the Nebraska Department of Administrative Services; FRANCIS BOTELHO, Administrator of the Nebraska Department of Administrative Services Materiel Division; COURTNEY N. PHILLIPS, Chief Executive Officer of the Nebraska Department of Health and Human Services; and CALDER A. LYNCH, Director of the Nebraska Department of Health and Human Services Division of Medicaid and Long-Term Care;

Defendants,

and

WELLCARE OF NEBRASKA, INC.; NEBRASKA TOTAL CARE, INC.; and UNITEDHEALTHCARE OF THE MIDLANDS, INC.;

Intervenors.

This matter is before the Court on Plaintiff Coventry Health Care of Nebraska, Inc.'s ("Coventry") Motion for Evidentiary Hearing and to Present Live Testimony (Filing No. 66) in support of its Motion for Preliminary Injunction (Filing No. 21). Coventry also seeks leave to file a Reply Brief in support of its motion for an evidentiary hearing (Filing No. 72). In response to Coventry's request for oral argument in support of its preliminary-injunction motion, the Court scheduled argument for August 11, 2016. In its present motion, Coventry seeks an order directing that the August 11, 2016, hearing will be an evidentiary hearing on the merits and requests leave to present live testimony from Jonathan Copley, Coventry's Chief Executive Officer, at the hearing. *See* NECivR 7.1(d), (e). Coventry avers, live "[t]estimony from Mr. Copley is necessary due to the nature of the factual dispute raised by Defendants' and Intervenors' Oppositions to [Coventry's] Motion for Preliminary Injunction and to clarify outstanding factual issues that are essential to" resolve that motion. Coventry also seeks leave to file a reply brief in support of its motion for an evidentiary hearing (Filing No. 72).

The Defendants and Intervenors oppose Coventry's motions, arguing an evidentiary hearing is unnecessary because (1) "Mr. Copley has already submitted a 42 paragraph declaration in support of" Coventry's motion and (2) Coventry submitted a reply brief to address factual or legal issues raised in the Defendants' and Intervenors' opposition briefs and did not attach another declaration from Mr. Copley. The Defendants and Intervenors also emphasize that "[g]ranting only one party leave to present live evidence at the hearing would be indisputably prejudicial." The Defendants and Intervenors alternatively request that if the Court grants Coventry's motion for live testimony, the Court grant them leave to depose Mr. Copley before the hearing.

Having carefully reviewed the record and the parties' submissions, the Court concludes an evidentiary hearing and live testimony from Mr. Copley are unwarranted at this time. The Court does not ordinarily grant evidentiary hearings on motions, *see* NECivR 7.1(d), and sees no compelling reason to do so here. The Court is also concerned granting the requested relief would unduly delay resolution of the request for preliminary injunctive relief. As such, Coventry's Motion for Evidentiary Hearing and to Present Live Testimony (Filing No. 66) and Motion for Leave to File a Reply Brief (Filing No. 72) are DENIED.

Dated this 8th day of August, 2016.

BY THE COURT:

s/ *Robert F. Rossiter, Jr.*
United States District Judge